

**BEFORE THE
FEDERAL MARITIME COMMISSION**

DOCKET NO. 15-11

IGOR OVCHINNIKOV, IRINA RZAEVA, and DENIS NEKIPELOV,

— vs. —

**MICHAEL HITRINOV a/k/a
MICHAEL KHITRINOV,
EMPIRE UNITED LINES CO., INC., and CARCONT, LTD.**

INFORMAL DOCKET NO.: 1953(I)

KAIRAT NURGAZINOV,

— vs. —

**MICHAEL HITRINOV a/k/a
MICHAEL KHITRINOV,
EMPIRE UNITED LINES CO., INC., and CARCONT, LTD.**

**COMPLAINANTS' RESPONSE TO THE MOTION TO STRIKE AND SEAL
BY NON-PARTY SERGEY KAPUSTIN**

Pursuant to Rules 69 and 71 of the Federal Maritime Commission's ("FMC") Rules of Practice and Procedure 46 C.F.R. 502 *et seq.*, Complainants, by their Counsel, Marcus A. Nussbaum, Esq. respectfully submit this brief in Response to the Motion to Strike and Seal by Non-Party Sergey Kapustin ("Kapustin").

RELIEF REQUESTED

Non-appearing movant and non-party Sergey Kapustin, without leave of the Presiding Officer, has filed a *fourth* set of motion papers, entitled "Motion to Seal and Strike", but which is

in reality an incoherent rant consisting primarily of further “argument” in support of Kapustin’s previous three motions seeking to intervene, and disqualify complainants’ counsel in this matter.

NATURE OF CLAIM

As the nature of claim is well known to the Presiding Officer, complainants’ counsel respectfully refers the Presiding Officer to prior motions made which set out complainants’ claims in greater detail which are incorporated herein and made a part hereof.

BRIEF STATEMENT

As set forth below, movant, Kapustin in the guise of a motion to strike and seal has filed a *fourth* set of motion papers now seeking omnibus relief; *none of which* as a non-party hereto, is Kapustin entitled to; nor does he have standing to seek the relief requested.

Further, Kapustin’s motion has plainly and clearly been authored by an attorney, upon information and belief either respondents’ present counsel, Mr. Jeffrey, or one Jon Werner, Esq. who has repeatedly and improperly colluded with Mr. Jeffrey and sought to interfere in this matter.

While Kapustin questions the mental stability of complainants’ counsel, his random and disorganized filings, alternately asserting contentions directly oppositional to one another reveals that he is incompetent to take *any* part in the litigation of this matter.

As represented to the Presiding Officer in a prior filing, Kapustin overtly waived any and all “attorney-client privilege” relating to complainants’ counsel’s prior representation of Kapustin.

Complainants’ counsel respectfully seeks guidance from the Presiding Officer on how to handle Mr. Kapustin’s obsessive-compulsive and repeated filings in a matter in which as of the time of this writing, he has not been granted leave to intervene in.

Complainants’ counsel is further compelled to request that the Presiding Officer, as set forth in the accompanying Notice of Cross-Motion, seal all of Kapustin’s docket filings, to the

extent that they contain scurrilous, libelous, slanderous, and wholly unfounded accusations against complainants' counsel, which as having been docketed, are otherwise available for public consumption.

Complainants have further requested in the accompanying Notice of Cross-Motion, that the Presiding Officer issue a Protective Order or its equivalent enjoining Kapustin, inclusive of attorneys who may be aiding and abetting him, upon penalty of fines and other sanctions as may reasonably be levied by the Presiding Officer, from and against any further filings in this matter, absent leave of the Presiding Officer, or the granting of leave to intervene.

RECENT PROCEDURAL HISTORY

On August 19, 2016 non-appearing movant and non-party Kapustin filed his instant Motion to Strike and Seal, to which this brief responds. At the time of this writing, Kapustin has an initial Motion to Intervene pending before the Presiding Officer, as well as two supplement submissions filed *without leave*, and now the ensuing instant motion, also filed *without leave* of the Presiding Officer.

ARGUMENT

Standard of Review

Rule 13 of the Commission's Rules of Practice and Procedure, 46 C.F.R §502.13 reads, in relevant part, as follows:

Privacy protection for filings made with the Commission.

(c) Filings made under seal. The Commission or presiding officer may order that a filing be made under seal without redaction. The Commission or presiding officer may later unseal the filing or order the person who made the filing to file a redacted version for the public record.

(d) Protective orders. For good cause, the Commission or presiding officer may by order in a case:

(1) Require redaction of additional information; or

(2) Limit or prohibit a nonparty's remote electronic access to a document filed with the Commission.

Rule 201 of the Commission's Rules of Practice and Procedure, 46 C.F.R §502.201 reads, in relevant part, as follows:

Duty to disclose; general provisions governing discovery.

Protective orders. (1) In general. A party or any person from whom discovery is sought may move for a protective order. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without Commission or presiding officer action. The Commission or presiding officer may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense...

Kapustin Fails to Meet the Requisite Standards

It is respectfully submitted that the above referenced rules of the Commission are the only ones which deal with the striking or sealing of material in a case.

It is further respectfully submitted that Kapustin abysmally fails to meet the standards of review of the above cited rules. Specifically, and in the first instance, Kapustin is *not a party* to this action; neither has any discovery been sought from Kapustin. Accordingly, Kapustin is *precluded* from seeking relief pursuant to Rule 201.

As to Rule 13 cited above, and at the outset, the Presiding Officer is respectfully asked to note that the material that Kapustin seeks to strike and seal are *a matter of public record*, in that said documents were exchanged in unrelated matters under color of no Order or Stipulation of Confidentiality, and under no Order of Sealing. In that the documents that Kapustin now seeks to seal or strike have thus been communicated to third persons with no objection, it is respectfully submitted that Kapustin cannot now attempt to "put the genie back in the bottle" by improperly seeking the relief of a sealing of records publicly exchanged with third parties as described above.

Additionally, and apart from furthering his baselessly denied but blatantly apparent personal vendetta against complainants' counsel, whom Kapustin has described in his motion papers as "liar" and "mentally sick", Kapustin has abjectly failed to demonstrate *any good cause whatsoever*; particularly in that he has not, at the time of the filing of his motion, been granted leave to intervene, or set forth any prima facie case as to why his ill-founded and incoherent motion should be granted.

Kapustin's Waiver of the Attorney-Client Privilege

Evidence of Kapustin's unbalanced mental state is abundantly provided by despite his undisputedly having waived any attorney-client privilege arising out of complainants' counsel's prior representation of Mr. Kapustin, at ¶ "7" of his latest motion, Kapustin complains that complainants' counsel has "...betray[ed] [the] attorney-client privilege..." the oxymoronic nature of which is self-evident.

As the balance of Kapustin's incoherent motion papers ramble from one issue to another, none of which have any connection with or bear any semblance to sealing or striking records, complainants' counsel will not further burden the Presiding Officer with a point by point refutation of same, other than to ask the Presiding Officer to *reject* such 'argument' (if it can be fairly characterized as such), inclusive of any and all appendices annexed to said motion, as being grossly unrelated to the purported requested relief at bar.

Finally, it is significant to note Kapustin's admissions as to: (1) at ¶ "11" of having waived attorney-client privilege; (2) that he was "...not straightforward all the time with the [C]ourt in other cases..."; and (3) as to the "bitter words" addressed to Kapustin by Judge Hillman of Kapustin being a fraud, liar, cheat, and master criminal.

CONCLUSION

As set forth above, though couched in the guise of a failed Motion to Seal and Strike which is abysmally insufficient to meet the requisite standard of review so as to result in the granting of said motion, Kapustin's latest motion is an incoherent rant on a jumble of issues, accusations, and deluded fantasies which abundantly reveal Kapustin's mental instability. Accordingly, and before Kapustin is permitted to in any way intervene in this matter, it is respectfully requested that Kapustin be ordered to undergo a competency hearing to ascertain if he has the mental competence to intervene or take part in this action.

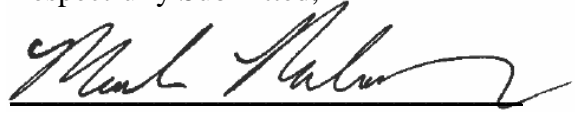
It is also noted that Kapustin, as a non-party to this matter, was not copied with the response of complainants' counsel to his initial Motion to Intervene, yet said motion papers somehow "magically found their way" into Kapustin's possession. It is respectfully submitted that the foregoing is further evidence of the collusion of the trinity of Kapustin, Eric Jeffrey, and Jon Werner.

Having failed to meet the requisite standards set forth, argued, and analyzed above, and once stripped of gratuitous inflammatory verbiage, delusional fantasies, and "argument" wholly unrelated to the relief requested, it is respectfully submitted that Kapustin's motion must be denied in its entirety, with prejudice.

WHEREFORE, complainants' counsel respectfully requests that Kapustin's motion be denied in its entirety with prejudice, and that complainants be granted such other and further relief inclusive of the sealing of Kapustin's scurrilous filings, and an Order or directive of the Presiding Officer enjoining Kapustin from further filings, together with such other and further relief as the Presiding Officer may deem just and proper under the circumstances.

Dated: Brooklyn, New York
August 19, 2016

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Marcus A. Nussbaum", written over a horizontal line.

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